

## IN THE SUPREME COURT OF IOWA

CLERK SUPREME COURT

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**IN THE MATTER OF THE  
COMMISSION ON CONTINUING  
LEGAL EDUCATION**\*  
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\***2016 REPORT**

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This report of the Commission on Continuing Legal Education is submitted as required by Iowa Court Rule 41.2 for the period January 1, 2016 through December 31, 2016.

THE COMMISSIONMembers

Chapter 41 of the Iowa Court Rules establishes the Commission on Continuing Legal Education. Iowa Court Rule 41.2 provides for the appointment of twelve members to the Commission, two of whom are not to be lawyers. During the period covered by this report, the non-lawyer members of the Commission included Dr. Elaine Smith-Bright of Des Moines and Dr. Chia Ning of Pella. The lawyer members of the Commission during the period covered by this report included:

The Honorable Jeffrey Neary, Merrill  
The Honorable Todd A. Geer, Grundy Center<sup>1</sup>  
Roberta M. Anderson, Mason City<sup>1</sup>  
Werner Hellmer, Dubuque<sup>1</sup>  
Joni Keith, Ottumwa  
Magistrate Daniel P. Kitchen, Washington  
Michael G. Pagel, Dubuque  
Margaret J. Popp Reyes, Council Bluffs  
Meredith L. Rich-Chappell, Iowa City<sup>1</sup>

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<sup>1</sup> Term ended June 30, 2016

Diana L. Rolands, Osceola  
Danielle Shelton, Des Moines  
Bryan D. Swain, Harlan  
Janece Valentine, Fort Dodge  
Mindi M. Vervaecke, Mason City

Werner Hellmer served as chairperson of the Commission until the conclusion of his term. Judge Jeffrey Neary was appointed chairperson effective July 1, 2016. Judge Todd Geer and Meredith Rich-Chappell also concluded their final terms on the Commission in June of 2016. Roberta Anderson retired from the practice of law and stepped down from the Commission this year; Mindi Vervaecke was appointed to the Commission to finish the remainder of Roberta's term. Magistrate Daniel Kitchen, Margaret Popp Reyes, and Michael Pagel were appointed to the Commission in July of 2016.

#### RULE CHANGES AFFECTING THE COMMISSION

The Court made two changes in 2015 that went into effect on January 1, 2016. These changes were:

- *CLE by reciprocity*. An amendment to Rule 41.9, which authorizes an attendance exemption for out-of-state attendance of equivalent hours. Out-of-state attorneys who reside out of state, did not practice law in Iowa in 2016, and who attended the required number of continuing legal education hours accredited by the CLE regulatory body in their state of residence, including the three clock-hours in the area of legal

ethics every two-year biennium, are now exempt from the attendance requirements of rule 41.3. The attorneys must still file an annual report and pay the annual report fee contained in rule 41.4 and must certify qualification for exemption on their annual report. Since this annual report covers 2016, and since the deadline for filing CLE reports for the 2016 calendar year is March 10, 2017, the full impact of this change will not be seen until next year's annual report.<sup>2</sup>

- *Preparation credit for CLE presenters.* Attorneys are entitled to one hour of preparation credit for each hour of accredited CLE for which they prepare written materials and present, up to a maximum of three hours per calendar year. This has been well-received by the CLE community here in Iowa. As with the case of the CLE via reciprocity, the full impact will not be known until after March 10, 2017.<sup>3</sup>

## ACCREDITATION

### Policies

Although the Commission considers all applications for accreditation on an individual basis, certain general policies regarding accreditation have been developed by the Commission. The current accreditation policies of the Commission are set out at Appendix A to this report.

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<sup>2</sup> 39 filers as of 2/3/2017

<sup>3</sup> 206 attorneys received CLE prep credit as of 2/3/2017

## Procedure

The Commission has granted the director of the office of professional regulation and the assistant directors for boards and commissions the authority to approve individual accreditation requests that clearly qualify for accreditation under the rules and the general accreditation policies of the Commission. A list of all approved requests is maintained on the Commission's web page<sup>4</sup> and is updated periodically as appropriate. When accreditation of a particular event appears unlikely based on Commission policies, the director or assistant director issues an informal denial of credit, explains the basis for the denial, and advises the applicant of the procedure for appeal. If the applicant desires consideration by an accreditation division of the Commission, the issue of accreditation is referred to one of two accreditation divisions for review.

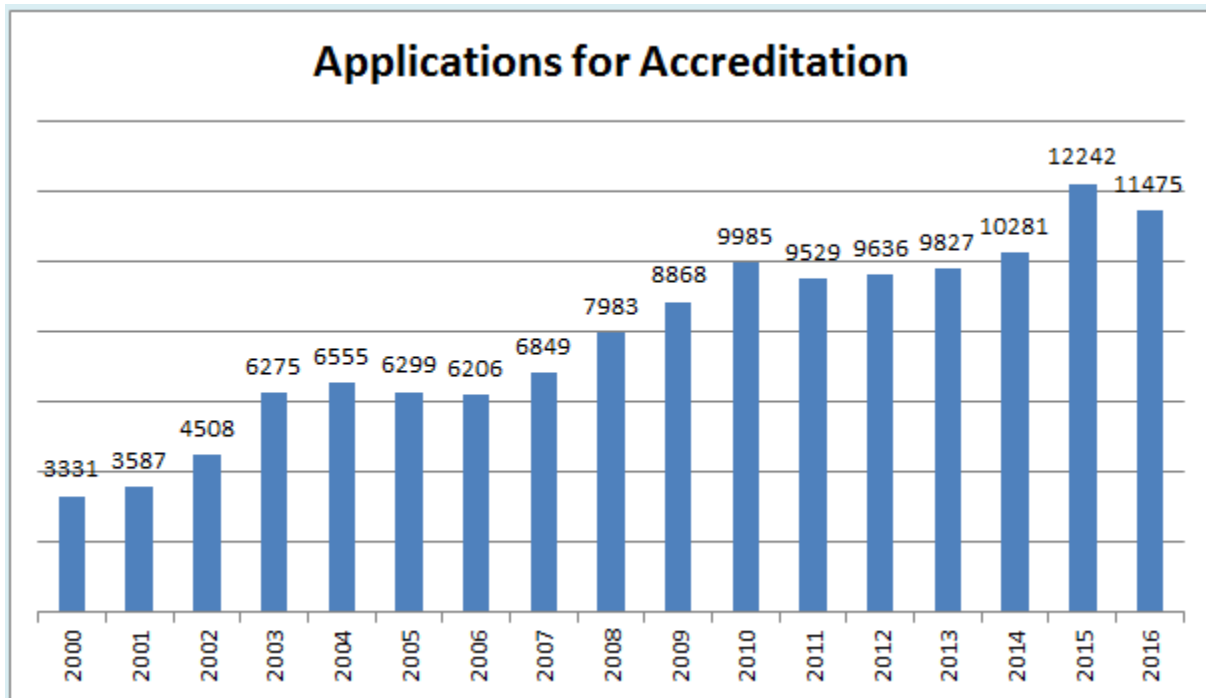
Accreditation matters not resolved by an accreditation division are reviewed and considered by the entire Commission at a regular commission meeting. In recent years, appeals have been relatively infrequent, such that most appeals have been considered and resolved by the entire Commission, sitting as an accreditation division at semiannual meetings.

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<sup>4</sup> [http://www.iowacourts.gov/For\\_Attorneys/Continuing\\_Legal\\_Education/CLE\\_for\\_Attorneys/](http://www.iowacourts.gov/For_Attorneys/Continuing_Legal_Education/CLE_for_Attorneys/)

## Statistics

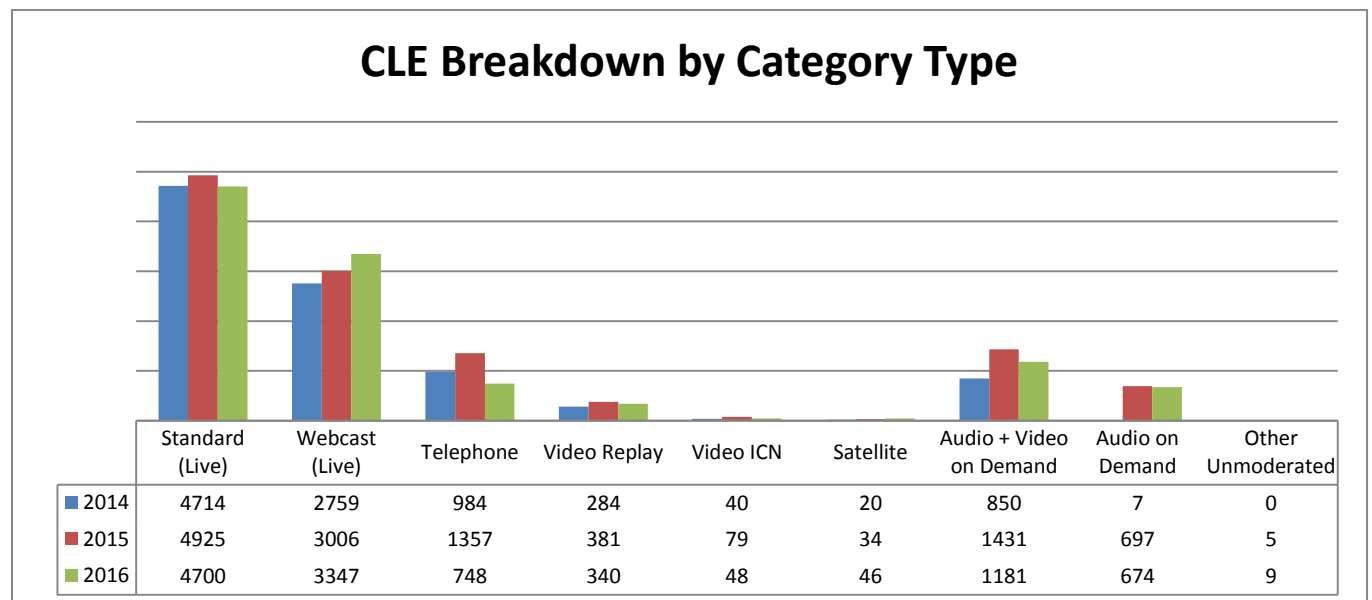
During calendar year 2016, 11,475 applications for accreditation were considered, a decrease of 767 applications. The previous year, 2015, there were 12,242 applications for accreditation.



Of the 11,475 individual applications for accreditation considered in 2016, 11,111 applications were approved in whole or in part. This is an approval rating of 97%. Informal consultation with applicants resulted in denial of credit for 36 applications. There were four appeals of these denials to the Commission pursuant to Rule 42.10. Three of the appeals resulted in the Commission's denial of the accreditation request, and one appeal resulted in partial CLE credit being awarded for the appealed program.

In 2016 there were 4,700 Standard (Live) CLE events accredited. This represents a decrease from 2015, where there were 4,925 Standard (Live) Events, but is on par with 2014. There was an increase in Live Webcast CLEs, with 3,347 such events taking place in 2016 as compared to 3,006 events in 2015. The decrease in one category is essentially balanced by the increase in the other, hence it would appear that CLE sponsors may be replacing some of their live, in-person CLE events with less-expensive-to-host, online live events.

There was a substantial decrease in telephone events in 2016, with 748 such events being accredited compared to 1,357 accredited in 2015. The 2016 number is even less than in 2014. The amount of Video Replays (rebroadcasts of prerecorded events) accredited in 2016 also decreased slightly to 340 events from 2015's 381 events.



## Unmoderated Continuing Legal Education

In 2002 the Court approved a change to the CLE rules and allowed for the accreditation of on-demand computer-based continuing legal education as long as the activities were interactive. Up to six hours of “on-demand” CLE can be utilized each calendar year by attorneys. In 2014, the Court refined the classification of CLE into “moderated” and “unmoderated” activities and removed the phrase “computer-based” from the rules. The Court defined seven specific categories of “moderated activities.” Of these six, only one, “Audio Replay,” was a new category.

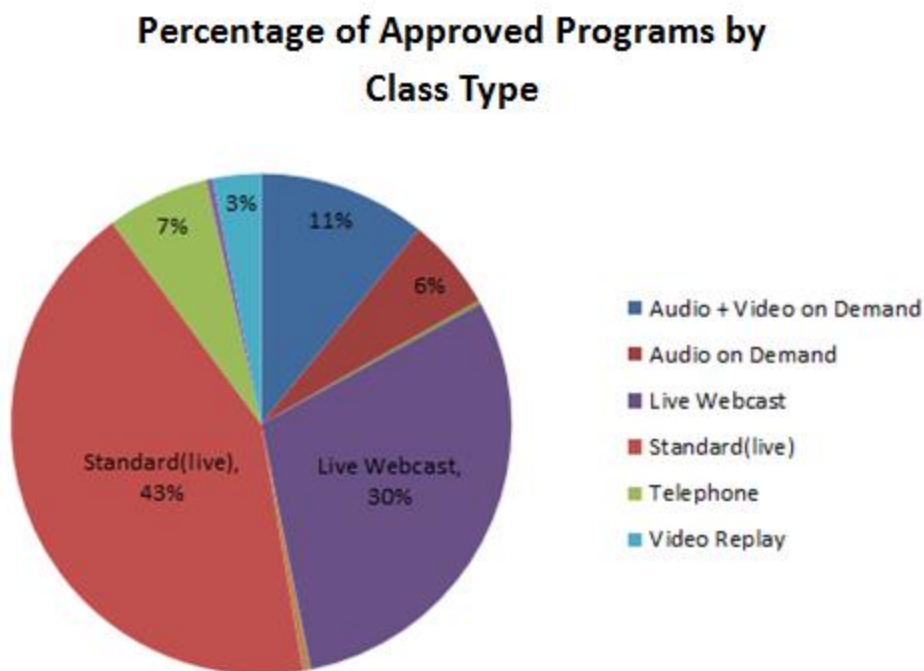
“Unmoderated activities” were defined generally, with the Court giving some examples of the formats it contemplated.<sup>5</sup> To accommodate this change, the Commission determined that, for accreditation purposes, unmoderated CLE activities would fall into one of three categories: “Audio+Video on Demand,” “Audio on Demand,” and “Other Unmoderated.” “Audio+Video on Demand” replaced the prior “Webcast on Demand” category and constitutes downloadable or streamed video and audio.

During 2016, a total of 1,864 unmoderated events were approved for Iowa CLE credit. This is down from the 2,131 unmoderated events in 2015. Such a decrease was not unexpected, as CLE sponsors were encouraged to submit timely CLE content from their current catalog of on-demand CLE

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<sup>5</sup> “*Unmoderated activity*” means a CLE activity presented by delayed or on-demand transmission or broadcast, in pre-recorded media such as audiotape, videotape, CD, podcast, CD-ROM, DVD, self-paced computer-based instruction, or another format, which has an interactive component and is approved by the commission based upon its guidelines. Iowa Court Rule 42.1(7).

offerings. Making up the largest proportion, 1,181 of the 1,864 unmoderated events were “Audio + Video on Demand,” which is primarily a recorded webinar that is available for viewing on a 24/7 basis. This same category had 1,431 events in 2015. In 2016 there were 674 “Audio on Demand” (e.g. recorded telephone CLE) events, a slight decrease from 697 such events the prior year.



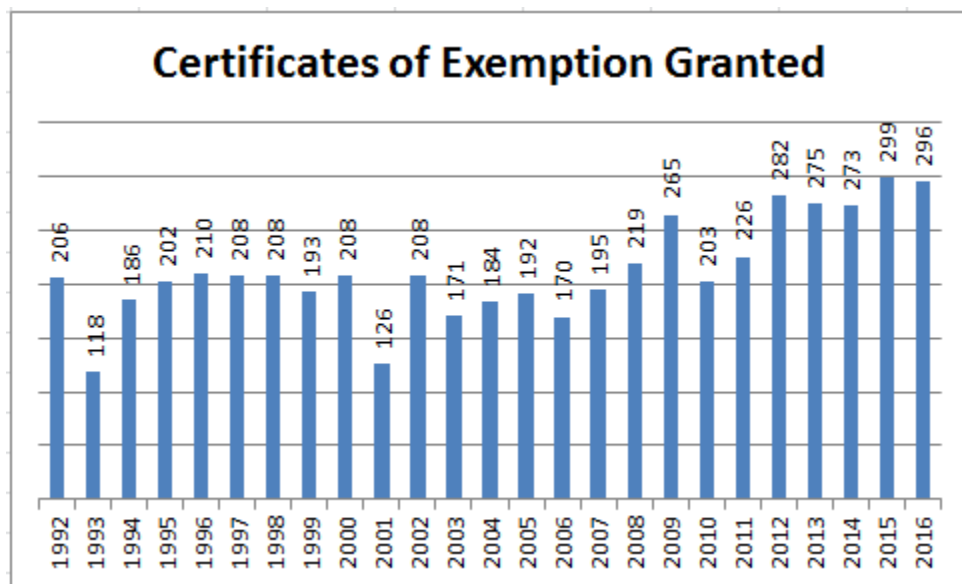
As is seen by the above chart, 80% of the CLE events submitted and approved are moderated or “live” events. This is a slight increase over 2015 in which 78% of the CLE events were live.



## COMPLIANCE

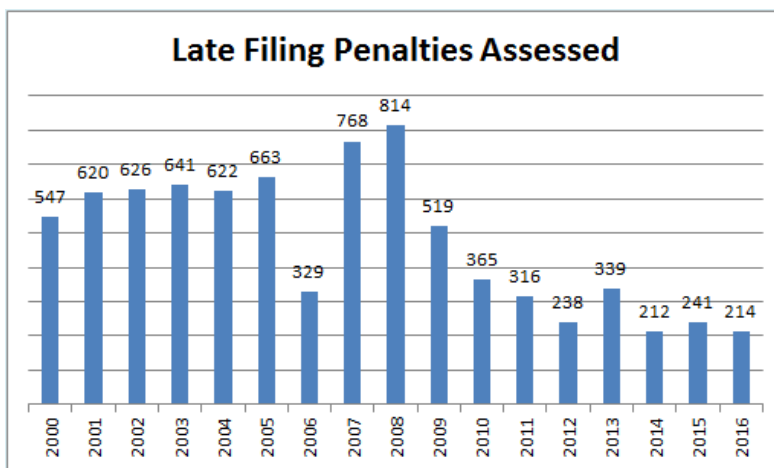
The annual report due March 10, 2016 was filed by 9,649 attorneys, each of whom also paid the administrative fee of \$10.00. Two hundred and ninety-six attorneys applied for and were granted certificates of exemption in 2016 pursuant to Iowa Court Rule 42.6. This compared to 299 in 2015. Of those lawyers previously granted certificates of exemption, thirty were reinstated to active practice status in 2016.

The following table shows the number of exemptions granted each year since 1992. Exemption applications tend to increase in years when a report showing completion of the biennial ethics requirement is due, and when rule changes otherwise increase the perceived level of difficulty achieving compliance.



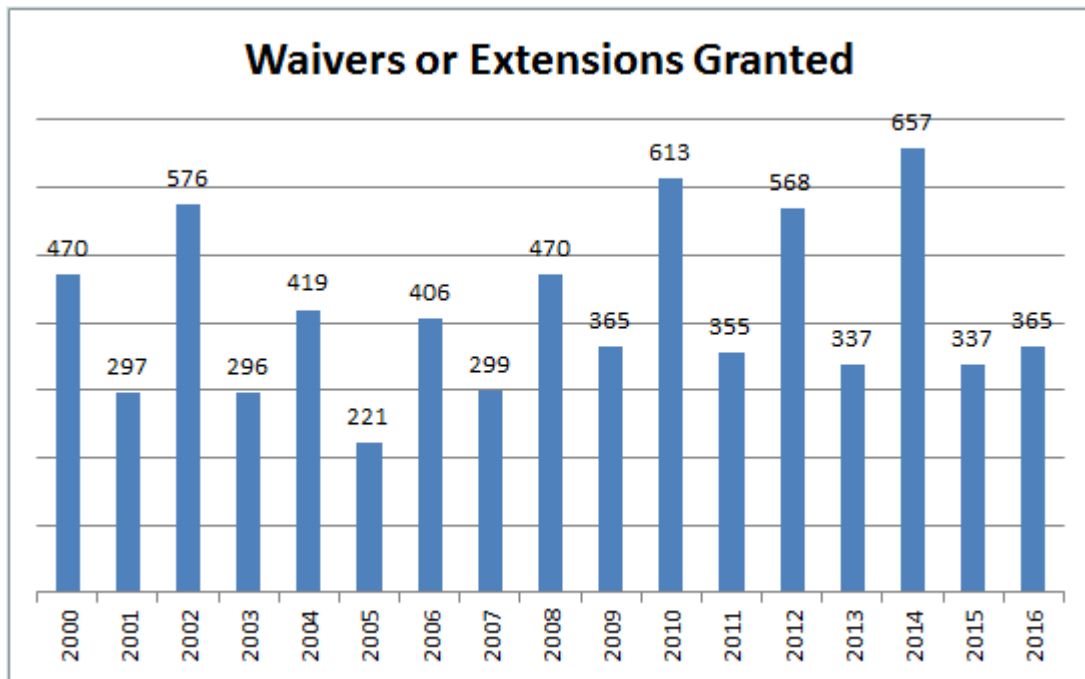
The Court adopted a rule in 1980 providing that attorneys who fail by March 1st of each year to file their annual report or pay any required annual fee will be assessed a penalty of \$25.00. That date has now been extended to March 10th. Effective January 1, 2009, the late filing penalty was increased to a minimum of \$100, increasing \$50.00 each succeeding month the report is late until a maximum penalty of \$200 is reached.

Late filing penalties during 2016 totaled \$28,650, paid by a total of 214 Iowa lawyers. This was a decrease from the \$30,400 paid by 241 Iowa lawyers in 2015. As the following table shows, the number of lawyers paying late filing penalties generally increased through 2005. In 2006, late filing penalties decreased due to the one-time extension of the filing due date to encourage electronic filing. In 2007, the filing due date reverted to March 1st, and the number of lawyers paying late filing penalties increased substantially. Since 2008, the number of lawyers paying late filing penalties has declined significantly, likely due to the increased amount of the monetary penalties.



## HARDSHIPS OR EXTENUATING CIRCUMSTANCES

During 2016, 365 applications for waivers or extensions of time were approved for completion of regular CLE requirements. The following table shows the number of total waivers or extensions of time approved in previous years. A factor contributing to the significant increase in applications approved in each even-numbered year since 1990 is that many attorneys fail to timely satisfy the biennial legal ethics component of their education requirements. While the number of applications between 2015 and 2016 increased, there was a significant decrease in extensions granted in 2016 compared to the last even-numbered, biennial ethics year. We are hopeful that this trend will continue, resulting in more attorneys filing timely CLE reports.



Iowa Court Rule 42.5 requires that a \$25.00 fee be assessed on all waiver or extension of time applications received after January 15th of the year following the year in which the alleged hardship occurred. In 2016, 261 applicants were assessed the \$25.00 fee for requesting a waiver or extension of time. This is an increase from last year, during which 208 applicants were assessed the \$25 fee.

Lastly, during 2016, thirteen attorneys were suspended by the Court for failure to comply with Iowa Court Rule 41.4. This compares to only nine attorneys suspended in 2015.

#### FINANCIAL

The independent audit report of the Commission's fiscal operations as prepared by Brooks Lodden, P.C., covering the fiscal year ending June 30, 2016, was submitted to the Court separately. The audit report includes a section entitled *Management Discussion & Analysis*, prepared by Commission staff. Examination of the *Management Discussion & Analysis* statement is recommended in lieu of any separate analysis the Commission might provide regarding financial operations of the Commission.

The Commission submitted and the Court originally approved an operating budget for the year July 1, 2016, through June 30, 2017. On November 15, 2016, the court approved an amended operating budget for the Commission, which is attached to this report. See Attachment B. Based on funds on hand and anticipated costs of administration during the 2016–2017

and 2017-2018 fiscal years, the administrative assessment to be paid to the Commission during the 2017 CLE report filing season by each active attorney eligible to practice in this state remains at \$10.00.

Dated this 10<sup>th</sup> day of February, 2017.

By Jeffrey A. Neary  
Hon. Judge Jeffrey Neary, Chairperson

**Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies\***

- (1) Credit is not allowed for committee work or portions of meetings devoted to administrative matters relating to the organizations sponsoring an activity, such as the business sessions of such organizations.
- (2) Credit is not allowed for sessions that involve a combined meal and presentation, e.g., lunch periods with speakers. The standard is that instruction must be a separate and distinct portion of the program, presented in an educational environment. Credit will be allowed if the sponsor splits the time into separate meal and instruction periods, demonstrates that the meal will not intrude on the presentation time, and otherwise shows the existence of an appropriate educational environment.
- (3) Credit is allowed both to speakers and those in attendance at continuing legal education activities. Speakers at an accredited continuing legal education activity are permitted credit for any actual time required to make the presentation, including panel discussions, question-and-answer periods and similar activities. However no additional credit is given to speakers for time spent in preparing their presentation.
- (4) The granting of credit to instructors or attending lawyers for instruction presented to non-lawyer or predominantly non-lawyer audiences depends on a variety of factors, including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation, and the level of attorney participation. Although attendance at these courses may be justified as beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course integrally relates to the practice of law and was of sufficient quality and rigor to meet other established standards for accreditation. Therefore, no credit is ordinarily allowed to instructors at educational activities aimed directly or primarily at individuals who have not yet been admitted to the Bar.
- (5) A person admitted to practice may obtain credit for taking or auditing a law school course whether at a graduate or regular law school level. A copy of the law school transcript is required when a lawyer requests credit for courses completed incident to a graduate program in law (e.g., L.L.M.) Contact hours are computed based on individual session duration and number of class sessions during the semester. Generally, the number of computed hours will be sufficient to satisfy the general CLE requirement for the year the courses are taken, and provide a 30 hour carry forward, which is the maximum. Ethics requirements still must be separately satisfied.

\*As Approved at May 2004 Commission Meeting, Amended at the May 2006, May 2008, October 2009, May 2011, May 2013, October 2013, October 2014 and May 2015 Commission Meetings

## **Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies\***

- (6) Whether or not a continuing legal education activity is sponsored by a non-profit or profit-making organization is considered by the Commission to be irrelevant to accreditation; however, the Commission looks very carefully at courses given by sponsors who appear to be motivated in giving such courses by a desire to assemble a group of attorneys in order to expose the attorneys to the services (other than CLE activities) the sponsor may be able to provide such attorneys or their clients.
- (7) Courses directed primarily at increasing the profits of the practice of law are deemed by the Commission not to meet the standards of Rule 42.3(1)(a) of the Commission's regulations, which requires that the educational activity "contribute directly to the professional competency of an attorney". However, continuing legal education activities dealing with law office management which are directed primarily at improving the quality of or delivery of legal services are deemed by the Commission to be accreditable.
- (8) Except in situations in which permission is specifically granted on applications based on hardship or extenuating circumstances, no credit is allowed for self-study of any kind whether or not aided by video or audio recordings.
- (9) "In-house" activities, that is programs or instruction given by a company or firm for its own employees are considered on a case-by-case basis.
- (10) Video tapes or remote television presentations are generally accredited only if there is a speaker or instructor present at the time and place of showing to answer questions and discuss the presentation with participants in the activity.
- (11) Programs involving non-legal subject matter or courses covering both non-legal subject matter and related common legal subjects designed for attorneys or both attorneys and other disciplines are not ordinarily given prior CLE accreditation. Lawyers may apply for post accreditation after attending such courses. The granting of credit for courses containing non-legal subject matter which are indicated as being integrally related to the practice of law will depend upon a variety of factors including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation and attorneys participation. While attendance at these courses may be justified as being beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course does integrally relate to the practice of law and was of sufficient quality and content to meet other established standards for accreditation.

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## **Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies\***

- (12) Programs consisting primarily of instruction on the operation or benefits of a particular proprietary software program are not eligible for credit, because they do not include sufficient substantive legal content. Programs that combine instruction on the operation and benefits of a particular program with substantive legal content will be considered on a case-by-case basis, with the burden on the applicant to demonstrate that the primary content pertains to common legal subjects or other subject matters integrally related to the practice of law.
- (13) Ethics must be a separate, designated session. Ethics credit is not approved for a part of a class or session (so-called "imbedded ethics"), unless the sponsor designates a specific time period for the ethics portion of the class or session.
  - (a) The area of legal ethics includes instruction intended for and directed to attorneys or judges and covering topics related to or specifically discussed in the IOWA RULES OF PROFESSIONAL CONDUCT, the IOWA CODE OF JUDICIAL CONDUCT, provisions of the MODEL RULES OF PROFESSIONAL CONDUCT, or provisions of any comparable ethics or professional responsibility code in the jurisdiction where the instruction is presented. The content description or handout materials must specifically refer to and be based on the disciplinary rules or judicial canons, or must bear a direct relationship to the Rules of Professional Conduct or the Code of Judicial Conduct.
  - (b) The area of legal ethics also includes instruction designed to help attorneys detect, prevent, or respond to substance-related disorders or mental illness that impairs professional competence. The instruction must focus on issues in the legal profession and in the practice of law, and not issues of substance-related disorders or mental health in general.
  - (c) The commission does not issue ethics credit for instruction on ethics requirements for government employees generally, such as Iowa Code chapter 68B (Conflicts of Interest of Public Officers and Employees) or its federal statutory or agency counterparts.
  - (d) Courses directly related to the practice of law that are designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law biases against persons because of race, sex, gender, gender identification, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status or political affiliation, shall be accredited as legal ethics.

\*As Approved at May 2004 Commission Meeting, Amended at the May 2006, May 2008, October 2009, May 2011, May 2013, October 2013, October 2014 and May 2015 Commission Meetings



## Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies\*

- (14) Rule 42.3(1)(d) provides specific authority for accreditation of computer-based transmission events, provided they are interactive. The definition of what qualifies as interactive was left to the Commission to develop as policy, so that the interpretation can mature as technology matures and Commission experience dictates. Current policy is as follows:
- (a) For *moderated activities*, the interactive requirement will be met if there is a method for the viewers to send their questions in to the presenters or a live moderator and hear the answers to (or discussions of) those questions live during the presentation. Computer-based transmission presented live must consist of at least a live streaming audio component like that used for live telephone CLE events. Most events in this category also incorporate a video component, in either a streaming video format or a moving slide presentation keyed to the audio transmission.
  - (b) For *unmoderated activities*, there is a limit of six (6) hours per calendar year. Unmoderated activities are valid for CLE accreditation for a period of one year from the date of the activity's production unless the commission determines that the activity's content remains substantively current. In addition to the other applicable guidelines set forth in these accreditation policies and in Rule 42.3(1), all unmoderated activities must contain the following:
    - i. High-quality written instructional materials, which must be available to be downloaded or otherwise furnished so that the attendee will have the ability to refer to such materials during and after the seminar;
    - ii. An interactive component, which either allows the attendee to submit questions electronically or in writing and receive an answer back from the course faculty or other qualified commentator within a reasonable period of time, or requires the attendee to take a mid-presentation quiz, end-of-presentation test or respond to a periodic prompt that branches the instruction based upon the user's demonstrated level of comprehension;
    - iii. A verification procedure, which independently verifies a lawyer's completion of the activity. Verification procedures for a course in recorded video format for individual viewing may consist of a lawyer reporting a course code to the provider after viewing the video, and attesting to completion of the activity in an affidavit. A lawyer affidavit attesting to the completion of an activity is not by itself sufficient. The CLE sponsor would then verify the accuracy of the code

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## **Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies\***

before issuing a certificate of attendance. Activities presented in segments should have a separate and distinct code for each segment, and spaces on the verification form to report all codes. Other acceptable verification procedures include pop-up boxes and time tracking by an online sponsor to independently verify that an attorney has completed an entire activity or the use of examination results in self-paced instruction. Certifications of attendance may be issued to the lawyer only after the sponsor has established that the lawyer completed the activity in its entirety; and

- iv. An attendance documentation procedure whereby the CLE sponsor retains verification and attendance information for at least two years after the lawyer's completion of the activity and is able to provide that verification and attendance information to the Commission upon request.

- (15) Method of Submission of Accreditation Requests: Requests need not be submitted with an original signature. Requests submitted by facsimile transmission are acceptable, however online submission of accreditation requests at <https://www.iacourtcommissions.org> is highly recommended.

\*As Approved at May 2004 Commission Meeting, Amended at the May 2006, May 2008, October 2009, May 2011, May 2013, October 2013, October 2014 and May 2015 Commission Meetings

CLE Amended Operating Budget, adopted on November 15, 2016

Fiscal Year 2016-2017

OPERATING EXPENSES

Salary and Salary Expenses	
Director Salary	\$31,314.18
Assistant Director Salary	\$53,129.84
Clerical Salary	\$39,202.57
Vacation/Sick Leave Payout	\$2,531.01
Part-Time Call Center Support	\$146.67
FICA	\$9,663.80
IPERS	\$11,054.36
Employee Insurance	\$27,307.58
Deferred Compensation	\$1,245.00
Auditing	\$2,300.00
Rent	\$8,126.00
Copier Lease	\$1,500.00
Repairs & Maintenance	\$250.00
Supplies	\$1,200.00
Telephone	\$1,440.00
Travel	\$4,500.00
Training	\$0.00
Postage	\$2,400.00
Insurance	\$650.00
Transcripts (SHR)	\$18,000.00
Automation Support	\$600.00
Banking Fees	\$700.00
Misc., Including Moving Exp.	\$1,000.00
Internet App. Maint. & Dev.	\$6,850.00
Internet Payment Charges	\$32,000.00
Unemployment Insurance	\$40.00
Payroll Processing	\$350.00
TOTAL OPERATING EXPENSES	\$257,501.01
CAPITAL EXPENDITURES	\$400.00
TOTAL PROJECTED EXPENDITURES	\$257,901.01